The fifth regular toast was then given:

"*The Supreme Court of the United States.*"

The Honorable JOHN CADWALADER, Judge of the District Court of the United States, being called on to respond, arose and spoke as follows:

Mr. Chairman, and Brethren of the Bench, and of the Bar:

The Supreme Tribunal, on whose behalf I respond to your greeting, was, in the time of our fathers, designated by a learned and eloquent lawyer and accomplished scholar as a "more than Amphictyonic Council." It is probable that no member of this great judicial council of the Nation ever met his brethren of the bar in a convention like the present. A judicial magistrate is, in a great measure—and, in some degree, in the measure of his official elevation—isolated from the busy world at large. His only constant association, beyond his domestic circle, is with the bar. He and they have, in the hall of justice, a common home. The daily renewal of their intercourse kindles in his bosom the warmest emotions of cordial affection. His heart yearns for their friendship. They reciprocate the feeling if he has their confidence; and this, if he merits it, he will surely have. Mutual friendship is moreover promoted by mutual considerations of self-interest. The hardships of professional toil are incessant. The forensic parts of this toil are attended with unremitting responsibilities and anxieties. The Bar, as a fraternity, could not adequately protect one another against those external suspicions, resentments and calumnies to which

they are liable. For adequate protection they must have the constant support of the Bench. Their policy therefore is to conciliate such support by deserving it. The judge, on his part, is always influenced by the strongest motives to conciliate and retain the friendship of the Bar. He can derive neither support nor assistance from outside popularity. Nor can he hope for the good will of litigants or of other interested attendants upon judicial proceedings. If, in the faithful performance of his duty, he can escape their unmerited odium, he is fortunate. Of this I will say something hereafter. Of the bystanders who may be disinterested, those in attendance to-day are seldom present on the morrow; and their subsequent remembrance of forensic occurrences is ordinarily more fleeting than a shadow. But, upon the members of the legal profession, the judge who is industrious and honest can always rely securely for support and assistance. It is every one's obvious policy to have friends *at home;* and, as I have said, in the court-room, and with the bar, the judge is always at home.

Here considerations of delicacy may however suggest themselves. The public intercourse of the Bench and the Bar is impersonal and formal. Self-respect imposes upon the judge self-restraint. There is thus necessarily an external aspect of more or less coldness in this intercourse. How then is he to know that he has the fellowship and good will of his brethren of the Bar—that good will and fellowship which he would reciprocate, as promoting their mutual welfare, and the public welfare?

This question, gentlemen of the Bar, you have happily answered, by your hospitable summons of the judges to this

festive meeting. Here our intercourse cannot be impersonal. It is not formal, not restrained, but free, open, cordial, affectionate. Let the remembrance of it survive the occasion, and the proceedings of to-day, certainly the most agreeable and most interesting, will not have been the least important, or the least profitable business of our opening year. May nothing mar its happiness!

We regret, all of us deeply regret, the absence of our distinguished and venerated brother, Judge Grier. He would, if here to gladden us with his voice, have responded more appropriately than myself, because he could not have transcended the sphere of his enlarged official experience. But he might have thought himself restrained from the consideration of any peculiar duties of the Bar of the United States to the Supreme Court of which he is a member. I am under no such restraint; and the subject of the response necessarily requires an expansion of my remarks beyond the narrower limits of my own particular experience. Of duties performable by lawyers in Court I will say nothing. But concerning some duties performable elsewhere, I will say a few words which I trust you will not think inappropriate.

Lawyers are the only persons capable of imparting to their fellow-citizens a true knowledge of the just relations of judges to the external world. For this reason, the members of the legal profession should promote, and, if possible, secure the immunity of the Supreme Court of the United States from illegitimate responsibility to public opinion. Here let us discriminate between just and illegitimate responsibility.

There is a just responsibility to public opinion from which no judicial or other magistrate should be exempt. The judiciary,

as every other organ of the government, requires the support of wholesome public confidence. But, where public opinion is misled and corrupted, judicial responsibility to it is illegitimate. The boldest criticisms upon judicial decisions by lawyers for the advancement of legal science cannot impair merited public confidence in the judiciary. Neither can public opinion as to judicial decisions be so misled by criticisms of persons not of the legal profession as to become corrupted. It is true that persons not educated as lawyers are naturally prone to carp and cavil at decisions which they do not understand, or cannot apply, and of which they seldom have any knowledge except through reports in newspapers. Moreover, such persons may not be able to comprehend that their own crude impressions of right do not, in all cases, furnish sufficient reasons for the legal decision of doubtful questions. But the inconveniences resulting from the unwise criticisms and inaccurate reports of persons thus ignorant of the law are trivial. Such trivial inconveniences, and some others, are unavoidable consequences of the publicity of judicial proceedings. This publicity is a priceless blessing. Without it, political freedom could not be preserved, nor would private right be secure. The inconveniences are insignificant alloys, inseparable from great benefits derived under the institutions of a free people, and should be disregarded. They are mentioned only to distinguish them from those causes of illegitimate responsibility to public opinion against which the judiciary should, under the institutions of a free people, be guarded by the wisdom of statesmen aided by the patriotism of lawyers.

Of two such causes of illegitimate judicial responsibility, one which has already been cursorily mentioned is the enmity

of disappointed litigants, whose property, life, liberty or reputation is affected by adverse judicial decisions, and the consequent enmity of their friends, adherents and partisans, and that of the class, often more numerous, of sympathizers from similarity of private interests. The other cause is hostile feeling engendered, through political prejudice, from popular discontent with decisions of questions of public interest. Upon the continent of Europe the terrible political dangers from unmerited judicial responsibility have, under each of these two heads, been a theme of occasional discussion from the age of Livy to that of Machiavel, and from the tranquil days of Montesquieu to revolutionary periods of the last and the present century. In England, on the contrary, judicial magistrates have enjoyed an almost total immunity from such responsibility. There, the apportionment of the functions of judicature between judges and juries, relieves the judges from the decision of all questions of dubious fact; and the salutary system of attributing to former decisions the force and effect of authoritative precedents reduces the number of disputable questions of law. In this country, the similar institutions and usages of English parentage do not secure a similar immunity to the judiciaries of the States, and of the Union, without an exception which is of immense and paramount importance. I refer, of course, to the exception of cases involving constitutional questions, and, more especially, questions concerning the constitutional existence or extent of asserted legislative powers.

In cases not within this exception, legislative enactment may—as in England it may in all cases without exception—supersede, or annul, or modify, the authoritative operation

of any judicial precedent; and the omission to exercise legislative power may thus be an implied legislative sanction of former judicial decisions. But, in the United States, upon questions of constitutional right or power, legislation cannot reverse a judicial precedent, or impair the force of its authority. The judiciary is the sole arbiter of such questions. Their decision by the tribunal of last resort cannot be impugned unless the judges, upon impeachment, should be convicted of wilful error. The judges cannot even properly be asked to revise their own former decisions except where it can be fairly argued that a decision was insufficiently considered. Amendment of the Constitution, the only recourse of the discontented, is ordinarily impracticable. The absence of legislative power over the subject thus casts upon the Supreme judiciaries of the States, and in a greater degree upon the Supreme Court of the United States, a moral responsibility such as no tribunal in England, or upon the continent of Europe, incurs. The exercise of this all-important jurisdiction may be the only protection of the weak against the strong, the only means of defending the constitutional rights of minorities against power otherwise arbitrary. But far more important and useful is the effect of resolving doubtful constitutional questions upon which conflicts of opinion, or worse conflicts, might otherwise continue till the whole framework of constitutional government would be shattered, and perhaps destroyed.

The Supreme Court might, through the decision of such questions, incur temporary odium of the prejudiced, of the ignorant, of the thoughtless, of the powerful. Political excitement, or bias, and perhaps a prevalent misdirected, but honest, desire to reform existing abuses may, moreover, engender

public dislike of the operation of existing constitutional provisions. These provisions the judges must, whether privately approving or disapproving them, alike faithfully apply and enforce. The purest, the wisest, the best instructed, judicial magistrate, may therefore, where he deserves most praise, encounter the greatest enmity of those who see only results which they dislike. The Court, through the simple performance of its constitutional duty, may thus become temporarily unpopular. Judicial unpopularity may, in itself, as a mere incident of the performance of such duty, or as a mere burden for the endurance of judges, be of little general importance. But such unpopularity must become a general evil if, through it, public confidence in the judiciary of the nation should be undermined and subverted. Should this occur, the whole National Government must inevitably be soon ruined and fall to pieces.

We may enjoy a cheerful certainty that the Constitution is not thus doomed. But the danger should not be overlooked. It will be averted, if lawyers are not unmindful of it, and, in their general intercourse with mankind, keep pure the atmosphere of public opinion as to the judiciary. Public confidence in the Supreme Court will assuredly be maintained, because the Bar of the United States will never be wanting in due reverence for the legitimate exposition of constitutional law.